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EXAMINER

EPFS, TODD MICHAEL

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/687,451  
Filing Date: October 16, 2003  
Appellant(s): ERNST ET AL.

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Thomas Fitzsimons  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed November 24, 2009 appealing from the Office action mailed June 24, 2009.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

5,758,465	Logue	6-1998
5,546,723	Jones	8-1996

6,866,458	Farrell et al.	3-2005
3,788,185	Gutshall	1-1974

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 37 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 37 is rejected to because it is not clear which shape of anti-rotation elements as applicant is now claiming a generally hemispherical shape. As previously rejected, the Examiner used a generally truncated hollow cone shape in the previous action.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-2, 8, 12, 26, 33-34, and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,758,465 to Logue in view of U.S. Patent No. 5,546,723 to Jones, and in further view of U.S. Patent No. 6,866,458 to Farrell et al. (Farrell).

Logue '465 discloses a rod hanger (fig. 5) comprising a generally planar mounting portion (24) defining a perimeter edge, and having a hole (52) along extending between a top surface (40) and a bottom surface (44) with the hole extending therebetween, a generally planar rod receiving portion (34) with a top surface (42), a bottom surface (46) and a hole (60) that includes a lip formation (64) disposed thereabout, and a connecting element (36), wherein the planes of the mounting and rod receiving portions are generally parallel, wherein rod receiving portion configured for threadably receiving the rod, wherein the rod hanger defines a unitary body with generally uniform thickness, wherein the hole of the mounting portion is coincident along the plane, has a radius and defines a circumference of 360 degrees, and wherein the mounting portion has four corners.

However, Logue '465 fails to specifically teach at least four anti-rotation elements on generally planar top surface of the mounting portion plane uniformly spaced from the hole, and wherein four anti-rotation members are configured for penetrating the substrate. Nevertheless, Jones '723 teaches a mounting portion (figure 1a-1c) with a central hole and four anti-rotation elements (14) disposed about the hole and spaced apart from each other by about 90 degrees along the circumference of the hole and

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dispose proximate to each of the corners of the mounting portion, and wherein four anti-rotation members are configured for penetrating the substrate. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the hanger of Logue '465 with four anti-rotation elements disposed about the hole and spaced apart from each other by about 90 degrees along the circumference of the hole and dispose proximate to each of the corners of the mounting portion as taught in Jones '723 wherein doing so would provide for superior rotation prevention means.

Furthermore, Logue '465 in view of Jones '723 discloses the previous invention failing to specifically teach four anti-rotation elements have a generally truncated hollow cone shape. Nevertheless, Farrell '458 discloses a generally truncated hollow cone shape as shown in figure 8 for penetratingly engaging the wall. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the hanger of Logue '465 in view of Jones '723 to replace the shape of the four anti-rotation elements with truncated hollow cone shape because one would have motivated to provide a clean cut through the surface without tearing or crushing the surface as taught in Farrell '458.

Claims 32, 35, 36, and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Logue '465 in view of Jones '723, and further in view of U.S. Patent No. 3,788,185 to Gutshall.

Logue '465 in view of Jones '723 fails to specifically teach wherein at least four anti-rotation members include a resilient cover, is secured by a chemical adhesive, and the resilient cover is formed of a polymer. Nevertheless, Gutshall '185 teaches wherein a mounting is secured by a resilient cover. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the rod hanger of Logue '465 in view of Jones '723 with four shape anti-rotation elements to include the resilient cover on each anti-rotation element as taught by Gutshall '185 wherein doing so would provide thereof for a protective coating on the anti-rotation members.

Furthermore, Logue '465 in view of Jones '723 discloses the previous invention failing to specifically teach wherein the resilient cover is secured by a chemical adhesive coat. Nevertheless, Gutshall '185 discloses wherein the resilient cover is secured by a chemical adhesive – a liquid bonding agent. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the rod hanger of Logue '465 in view of Jones '723 to include the adhesive coat because one would have motivated to provide a means for securing purpose as taught by Gutshall '185.

Last, Logue '465 in view of Jones '723, and in further view of Gutshall '185 disclose the previous invention failing to specifically teach wherein the anti-rotation elements have a generally hemispherical shape. Thus, Jones '723 discloses wherein the anti-rotation elements having nose-pointed prongs. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have

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modified the shape of anti-rotation elements of Logue '465 in view of Jones '723 to any shapes including a hemispherical shape because one would have motivated to provide a means for securing and gripping the plate into a wall or a ceiling. Furthermore, changing the shape of the anti-rotation elements would not make any difference since any shape of the anti-rotation elements would penetrate into a wall with a hammer and would not move at all.

#### **(10) Response to Argument**

In response to appellant's argument that there is no suggestion to combine the references (Logue '465, Jones '723, Farrell '458, Gutshall 185), the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, appellant will see that the references of Logue '465, Jones '723, Farrell '458, and Gutshall '185 are presented in the above office action, and are properly rejected since they all have a close tie to a fastener connection.

In this case, Logue '465 describes a rod hanger of the prior art exactly like the appellant except for the anti-rotation elements. Jones '723 discloses a fastener with a plate having four anti-rotation elements. Since, Jones '723 fails to disclose the truncated cone shaped anti-rotation element, Farrell '458 discloses a fastener having a



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truncated cone shape as shown in Figure 8. Furthermore, Farrell '458 fails to disclose a resilient member with adhesive means. Nevertheless, Gutshall discloses a fastener having a resilient member and is molded with an adhesive for permanently bonded. With the combination of the references listed above, appellant will see that the rejection are properly rejected with the motivation provided in the above Office Action.

At last, regarding claim 37 being rejected as indefinite under 112, second paragraph. it is not clear since claim 1 recites that the anti-rotation element have one of a generally hemisphered or a truncated cone shape. Furthermore, claim 37 depends from claim 1 and recites that the elements have a generally hemispherical shape. Claim 37 contradicted with claim 1, since there are no drawings having both hemisphered or truncated cone shapes. Again, appellant will see that claim language in claim 1 and 37 do not go together and is not clear which shape appellant is trying to recite.

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**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/T.M.E./

Todd M. Epps

Conferees:

/J. ALLEN SHRIVER II/  
Supervisory Patent Examiner, Art Unit 3632

Darnell Jayne, APS /dj/